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Office of Administrative Law Judges
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Issue Date: 06 April 2007

CASE NO.: 2006-LDA-00034

OWCP NO: 02-138658

In the Matter of:

Z. S.,
Claimant,

vs.

SCIENCE APPLICATION INTERNATIONAL CORP.,
Employer,

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA/AIG WORLDSOURCE,
Carrier.

Appearances: Jorden N. Pederson, Jr., Esquire
For the Claimant

Michael W. Thomas, Esquire
For the Employer/Carrier

Before: Jennifer Gee
Administrative Law Judge

DECISION AND ORDER DENYING CLAIM

INTRODUCTION

This is an action for benefits filed by the Claimant under the Longshore and Harbor Workers' Compensation Act ("Longshore Act"), 33 U.S.C. §§ 901 *et seq.*, as extended by the Defense Base Act ("DBA"), 42 U.S.C. § 1651(a), for various injuries sustained during the Claimant's employment with Science Application International Corporation ("SAIC") between

August and November of 2003. It was initiated with the Office of Administrative Law Judges ("OALJ") on January 5, 2006, when it was referred to the OALJ for formal hearing by the District Director of the Office of Workers' Compensation Programs. (ALJ 1.)

For the reasons set forth below, the claim is DENIED.

PROCEDURAL BACKGROUND

This case was heard and set before me in San Diego, California, on May 25 and 26, 2006, and June 29 and 30, 2006. The Claimant; her counsel, Jorden N. Pedersen Jr.; and counsel for the Respondents, Michael W. Thomas, all appeared and participated in the trial.

At trial, I admitted the Claimant's Exhibits ("CX") 1-37, Respondents' Exhibits ("EX") 1-26, and ALJ Exhibits 1-4. (HT,[1] pp. 15-16.) However, I rejected CX 32. (HT, p. 21.) The Claimant asked for additional time to consider whether she had objections to admission of Respondents' Exhibit 27, which was provided during the hearing. Respondents' Exhibit 27 was admitted on October 11, 2007, after the Claimant indicated she had no objection to its admission. After the hearing, Respondents submitted four deposition transcripts for inclusion in the record. They were admitted as Respondents' exhibits EX 28 to EX 32 on September 26, 2006. The Claimant also submitted two additional exhibits, CX 39 and 40, after the hearing ended. Respondents were given an opportunity to object to the admission of these exhibits and stated on October 4, 2006, that they had no objections to their admission. Due to an oversight, I did not enter an order specifically admitting those exhibits. It is hereby ORDERED that Claimant's exhibits CX 39 and 40, be admitted into evidence. The Claimant and Respondents filed closing briefs, which were both received on September 29, 2006.

ANALYSIS AND FINDINGS

Issues

The following issues are pending in this case:

1. Is the Claimant covered by the DBA extension to the Longshore Act?
2. Did the Claimant suffer an injury during her employment with SAIC?
3. Was the Claimant's injury work related?
4. What is the nature and extent of the Claimant's injury?
5. What was the Claimant's average weekly wage at the time of her injury?
6. What methodology should be used to compute the Claimant's average weekly wage?
7. What benefits are the Claimant entitled to?
8. Has the Claimant reached maximum medical improvement?

[1] References to "HT," are to the hearing transcript.

Stipulations

At the beginning of the hearing, the parties stipulated to the following:

1. There was an employer/employee relationship between the Claimant and SAIC at the time of the Claimant's claimed injury in 2003. (HT, p. 15.)
2. The Claimant's claim was timely noticed and timely filed. (HT, p. 15.)

I have reviewed the administrative record and find that the evidence in the record supports the stipulations. Accordingly, I approve the stipulations as stated.

Factual Background

A. The Business Structure of SAIC

In 2003, SAIC was made up of roughly 50 separate "Groups," each overseen by general managers. (EX 30, pp. 2080, 2082.) Each of these Groups within SAIC would internally compete with one another to acquire business. (EX 30, p. 2082.) The Group that successfully won a particular contract would then become the Group responsible to the customer for execution of the contract's requirements. (EX 30, p. 2082.)

Several years ago, the Department of Defense ("DOD") had a wide-area network called the Defense Information Systems Network ("DISN"). (EX 30, p. 2084.) In 2001 or 2002, the Dube Group, headed by Peter Dube, competed with other SAIC Groups to support DISN for the DOD in Iraq under a contract referred to as the DISN Global Services ("DGS") contract. (EX 30, p. 2085.) The Dube Group ultimately won the DGS contract over the other SAIC groups. (EX 30, p. 2085.)

The DGS contract was an indefinite delivery and indefinite quantity ("IDIQ") contract, and did not guarantee that the Dube Group would receive work or funds. (EX 30, p. 2085.) Rather, funds were paid to the Dube Group after it completed the task orders awarded under the DGS contract. Although the Dube Group won the DGS contract competitively from the Department of Defense, it still had to submit proposals and compete externally to acquire a task order under the contract. (EX 30, pp. 2097, 2098.) One of the task orders assigned to the Dube Group through the DGS contract was Task Order 20, which was assigned by the Defense Information System Agency ("DISA"). (EX 30, p. 2089.)

Task Order 20 was an assignment to work on the telecommunications infrastructure in the Green Zone of Baghdad, Iraq. (EX 30, pp. 2091-92.) All work for Task Order 20 was to relate to the DISN and fall under a $50 million spending limit. (EX, 30, pp. 2091-92, 2096). The Dube Group was authorized to subcontract work for Task Order 20 out to other organizations, including other SAIC Groups. (EX 29, pp. 1808-09.)

When the Claimant first arrived in Iraq, she discovered the Dube Group needed to fill a number of positions for work on the DGS contract. (EX 29, pp. 1808-09.) These positions were filled with qualified applicants who were identified by SAIC recruiters. SAIC recruiting expenses were not billed to the DOD as part of the DGS contract, but were paid from "overhead"

or "profit." (EX 30, pp. 2102-03.) Other SAIC employees working under Task Order 20 directly billed the customer, the DOD. (EX 30, pp. 2102-03.) Employees who were authorized to bill the DOD directly were required to undergo a screening process, which included an orientation, security clearance and vaccinations. (EX 29, p. 1800.)

B. The Claimant's Professional Background

The Claimant has a bachelor's degree in computer science and a master's degree in electrical computer engineering from the University of Cincinnati. (HT, p. 61.) After college, the Claimant worked as an engineer with a company in Cincinnati, Ohio for nearly five years. (HT, p. 61.) During her employment there, she designed hardware drivers and wrote software to activate the drivers. (HT, p. 61.) Afterwards, she began to work for Bell Company, where she worked on their operation support system ("OSS") and business support system ("BSS"). (HT, p. 62.)

The Claimant was eventually hired as a Telecommunications Billing Systems Manager for SAIC on January 31, 2001. (HT, pp. 61-62.) The Claimant's duties at SAIC included engineering, architecting OSS and BSS solutions, business process engineering, managing resources for customer care and billing, providing performance reviews, and designing telecommunications systems. (HT, p. 63.) While employed by SAIC, the Claimant worked exclusively for the Robert Young Group ("Young Group"). (HT, p. 65.)

Before going to Iraq, the Claimant worked on multiple projects for both private companies and various government entities. (HT, pp. 66, 67.) The projects included work on government contracts for the States of Nevada and Florida and an assignment involving the country of Egypt. (HT, p. 71.)

In early 2003, the Claimant's job title changed from Telecommunications Billing Systems Manager to Director of Telecommunications Services, and her duties became broader in scope. (HT, pp. 68-70.) In August of 2003, the Claimant was sent to Iraq by the Young Group of SAIC.

C. The Claimant's Work in Iraq

1. The Claimant's Assignment to Iraq

The Claimant was first contacted about going to Iraq in mid-July of 2003, by Robert DeCort, the Vice President for Program Management at SAIC. (HT, p. 72.) At that time, Mr. DeCort's main responsibility was to develop new work and garner new contracts. (HT, pp. 82, 296.) When Mr. DeCort became aware of a potential opportunity for SAIC to provide professional services in the commercial telecommunications arena in Iraq, he contacted Robert Young, the Claimant's supervisor and the head of the Young Group. (HT, p. 296.) Mr. DeCort asked to be referred to a person from the Young Group who had expertise in interconnect billing. (HT, pp. 296, 297.) He was referred to the Claimant, who was an expert in telecommunications requirements and design for interconnect billing. (HT, pp. 302-03.) Mr. DeCort contacted the Claimant and informed her that he was looking for someone with her telecom expertise to work in Iraq. (HT, p. 72.) The Claimant initially expressed hesitation about going to Iraq. (HT, pp. 73, 309, 342.) Mr. DeCort relayed the Claimant's sentiments to Mr. Young, and he subsequently

conducted interviews to find an alternative candidate with the same capabilities as the Claimant to go to Iraq. (HT, p. 74; CX, 3; EX 28, pp. 1726-27.) After interviews were conducted, the Claimant changed her mind and expressed a willingness to work in Iraq for SAIC. (HT, pp. 310, 344.) A couple of weeks later, on August 23, 2003, she left with Mr. DeCort for Iraq. (HT, pp. 75-76.)

2. The Dube Group's DGS Contract with the DOD

To work under the DGS contract, an SAIC employee had to first be given a Task Order 20 charge number, and only those with a security clearance could obtain a charge number. (EX 29, p. 1818.) Furthermore, persons who were certified and sent to Iraq to work under the DGS contract were escorted from the Baghdad airport, registered in the Green Zone, and assigned a badge. (EX 29, p. 1819.) When the Claimant arrived in Baghdad, she was escorted by an SAIC employee working under the Iraqi Media Network ("IMN") contract to obtain a badge. (HT, p. 141-143.) She was issued a badge that indicated that she worked for IMN as a "IMN/SAIC contractor." (HT, pp. 141-43) However, she did not perform any work with the IMN. (HT, pp. 142-43.) Her badge was only labeled as an "IMN/SAIC contractor" to enable her to access and stay in the Green Zone because only those individuals who were working under a government contract were allowed to access, enter, and stay in the Green Zone. (HT, pp. 141-43.) Furthermore, although the Claimant had a badge and was authorized access in the Green Zone, she never obtained a security clearance from the United States or from SAIC. (HT, p. 223.)

While in the Green Zone, because of a shortage of rooms, SAIC made arrangements for the Claimant to share a room with Leslie Aaron, another SAIC employee who already had a room at the Al-Rashid Hotel. (HT, pp. 83-84, 228, 327.) The Claimant was never formally authorized to stay in the Green Zone at the Al-Rashid Hotel. (EX 27, p. 1465.) Rather, she was allowed to stay there because she was known within SAIC. (EX 29, p. 1823.)

The Claimant did not receive any military training and was not provided with a helmet or flack jacket before leaving for Iraq, nor was she issued any such equipment while there.[2] (HT, p. 86.) However, such training and equipment were provided for employees working under the contracts with the United States, including Task Order 20. (HT, pp. 343-44, 351.)

The Claimant was sent to Iraq to develop business and enter into contracts on behalf of the Young Group. (EX 28, p. 1695.) She was given authority to acquire entirely new, independent contracts or subcontracts. (EX 28, pp. 1695-96.) When she arrived, she contacted Scott Rodakowski, the supervisor of the Dube Group in Iraq, to try to secure a subcontract for the Young Group through the Dube Group. (EX 29, pp. 1807, 1810.) She asked Mr. Rodakowski about the possibility of the Young Group supporting the Dube Group in their execution of the DGS contract. (EX 29, p. 1810.) Mr. Rodakowski told her about other possible contracts she might want to pursue and other business development opportunities for telecommunications in Iraq. (EX 29, p. 1811.) Mr. Rodakowski also informed the Claimant of the requirements of Dube Group's Task Order 20 and mentioned that they might need to fill certain positions. (EX 29, p. 1826.) The Claimant offered to help fill those positions, and Mr.

[2] The Claimant was given this equipment to use when she left the Green Zone by a U.S. military officer who befriended her.

Rodakowski told her that he would agree to look at and review the resumes she provided, but that he could make no guarantees that he would hire any of the applicants. (EX 29, p. 1808.) The Claimant began looking for applicants to fill the lead engineer position for the Dube Group. She drafted a job description and set up an interview with Bob Enger, one of the applicants. (HT, p. 233.) Bob Enger was eventually hired to work directly for the Dube Group under the DGS contract. (EX 29, p. 1832.)

While working for the Young Group in Iraq, the Claimant made numerous proposals by creating new telecommunications designs, thus exercising her specialized knowledge and the Young Group's ability to perform the technical requirements needed for a particular project. (HT, pp. 81, 110, 122.) Although she offered the services of the Young Group to Mr. Rodakowski and the Dube Group, Mr. Rodakowski told her that there was no work that needed to be done by the Young Group on the Task Order 20 project. (EX 27, p. 1560.) The Claimant never worked for Mr. Rodakowski, the Dube Group, or the DGS contract. (EX 28, pp. 1696, 1710; EX 29, pp. 1818, 1821.)

The only work that the Claimant performed for the DGS contract involved the hiring of Robert Enger. (EX 29, pp. 1826-27.) The Claimant wrote a job description and identified Robert Enger from the Young Group as a potential applicant for the position. (HT, p. 117.) The Dube Group eventually hired Mr. Enger to fill a lead engineer position. (EX 29, pp. 1827-29.) Although the Claimant provided Mr. Enger's resume to the Dube Group, she was not involved with the hiring process or the ultimate decision to hire Mr. Enger. (EX 29, pp. 1835-36.) The expenses associated with this recruitment effort were not charged to the contract, but rather to overhead or profit. (EX 29, p. 1698.)

3. Cisco, Inc.

One of the Dube Group's tasks was to establish communications inside the Baghdad convention center and at the Palace. Because both facilities were huge and they were in a hurry to provide communications, Mr. Rodakowski decided to explore the possibility of setting up a wireless communications system in both locations. After the Claimant's arrival in Baghdad, Mr. Rodakowski mentioned his plans to her. (EX 29, pp. 1812-13.) Cisco did a very preliminary survey about the options for establishing a wireless communications system, but the Dube Group decided to stay with a wired system because of security and cost concerns. (EX 29, p. 1814.) The Dube Group used Cisco equipment extensively in the communications system that it set up under Task Order 20 and bought about $15 million worth of Cisco equipment. (EX 29, p. 1815.) Though the Claimant might have helped explore the possibility of a wireless communications system, her help was not needed because Mr. Rodakowski had a number of engineers working for him who were familiar with wireless capabilities. (EX 29, p. 1817.) Mr. Rodakowski also did not use the Claimant or the Bob Young group to obtain the equipment the Dube Group purchased from Cisco. (EX 29, p. 1817.)

4. Iraqi Reconstruction Development Committee

The Claimant also designed proposals for the Iraqi Reconstruction Development Committee ("IRDC"). (HT, pp. 94-95.) However, the Young Group did not win a contract to work with IRDC. (EX, 28 p. 1714.) Furthermore, there was no employee from SAIC in Iraq

who supported the IRDC contract. (EX 32, p. 2207.) The Claimant never charged any time to the IRDC contract. (EX 32, p. 2222.)

5. The Claimant's Billing

While in Iraq, the Claimant was directed to charge her hours to two charge codes, one named "General Marketing" and the other named "Iraq Trip Zarin." (HT, pp. 97, 134.) These charge codes were overhead marketing charge codes. (HT, p. 471.) One charge code was assigned to the corporate offices of SAIC, and the other was assigned to the Global Telecommunications Group, which was the Young Group. (HT, pp. 97, 210, 297, 470.) The Claimant did not directly charge any of her time in Iraq to the DISA contract, the IRDC contract, the IMN contract, or any other known contract that SAIC had with the Federal Government. (HT, pp. 223-27.)

The accounting office of SAIC's Young Group did not charge any of her time to any existing contract SAIC had with the Government for the entire period the Claimant was in Iraq from August 23, 2003, to November 15, 2003. (EX 28, p. 1708; HT, p. 471.) The Claimant's work was charged to the two separate overhead accounts: SAIC's corporate overhead source and the Young Group's overhead source. (HT, pp. 471, 1708.)

6. The Attacks on the Al-Rashid Hotel

While the Claimant was staying in the Al-Rashid Hotel in Baghdad, the hotel was attacked on two separate occasions. (HT, p. 157.) The first attack occurred in the early morning on September 27, 2003. (HT, p. 157.) The second attack occurred in the early morning on October 26, 2003. (HT, p. 157.) The Claimant was inside the hotel during both attacks. (HT, p. 157.)

After the first attack, the Claimant was given instructions about what to do in the event of another attack on the hotel. The Claimant was in bed and woke to the sounds of exploding rockets during the second attack on the hotel. (HT, pp. 157-58.) After she realized the loud noises she heard were rockets detonating in the hotel, she went to the bathroom to protect herself. (HT, pp. 157-58.) However, she was unable to get inside the bathtub as she had been instructed to do after the first attack. (HT, p. 158.) While the attack continued on the hotel building, she sat on the bathroom floor covering her ears and praying for the attack to stop. (HT, p. 158.) Due to the smoke from the rocket attacks, the Claimant's eyes and throat began to burn and her breathing became restricted. (HT, pp. 159-60.) She then got an oxygen mask over her mouth and made her way out of her room. She looked for the guard stand on her floor, but the stand and guard were gone. She heard water running from sprinklers but could not see anything because of the smoke. She found her way to the stairway where she found other hotel residents going down the stairs, but she found the stairway covered with blood. (HT, pp. 161-62.) When she finally exited outside, she realized this attack had been worse than the first one because of the number of stretchers brought in for the injured people. (HT, p. 162.) Later that day, the Claimant discovered that a Lieutenant Colonel who had befriended her and loaned her his flack jacket and helmet when she left the Green Zone had been killed during the attack. (HT, pp. 163-645.)

The Claimant witnessed other tragic events in the Green Zone while she was in Iraq. (HT, p. 165.) She saw dead bodies of soldiers being brought into a military hospital and also saw the lifeless bodies of children laying in the streets. (HT, pp. 35, 165.)

The Claimant arranged for her return flight back to the United States without any assistance from SAIC, and returned to the United States on November 17, 2003. (HT, pp. 147-48.)

D. The Green Zone of Baghdad, Iraq

The Al-Rashid Hotel was located in the Green Zone of Baghdad, Iraq. The Claimant did most of her work in the Green Zone. (HT, pp. 89, 136, 140; EX 29, 1864.) The Green Zone was approximately a two to three square mile area in Baghdad, Iraq, which was cordoned off and separated from the rest of Baghdad by 10 feet high concrete walls. (HT, pp. 334-35.) The Green Zone was mainly protected by private security contractors. (HT, p. 335.) It provided a secure place for housing for the Coalition Forces, diplomats, contractors, and news media. (HT, pp. 334-35.) The Coalition Forces included both military and civilians from other countries including Italy, Australia, the Netherlands, and Great Britain. (HT, p. 335.) The Green Zone was the primary base of operations for the Coalition Provisional Authority ("CPA"). (HT, p. 335.) Additionally, many indigenous Iraqis lived in the Green Zone and set up shops and markets there. (HT, p. 336.) Military enclaves and headquarters were also located within the Green Zone. (HT, p. 336.)

There were guarded areas controlled by military police and guards at entrances and exits to the Army posts within the Green Zone. (EX 29, p. 1875.) Although the Green Zone was partly protected by the military and had an appointed mayor who was a U.S. military officer, it was not governed controlled or owned by the military. (EX 29, pp. 1839-40.) Rather the CPA owned and controlled the Green Zone, maintained order in the Green Zone, and issued entrance badges. (HT, pp. 137, 140; EX 29, pp. 1839, 1840, 1865.) The people within the Green Zone were not required to follow U.S. military rules or standards of procedure normally required on a military base. (EX 29, pp. 1840, 1841.)

E The Claimant's Medical Condition After Returning from Iraq

After returning from Iraq, the Claimant became very lethargic and depressed and suffered from insomnia, which prevented her from sleeping through the night. (HT, p. 172.) She continued to work at SAIC until she was laid off on February 21, 2004. (HT, pp. 205-06, 210.)

Upon her return from Iraq, the Claimant sought treatment from her primary care physician at the time, Dr. Fahimeh Lessani, for the pain and stiffness she suffered on her right side. (HT, p. 174.) In January of 2004, Dr. Lessani ordered an MRI of her right shoulder and referred the Claimant both to physical therapy and to Dr. Heinz Hoenecke, Jr., an orthopedic surgeon. (HT, p. 175; CX 9, p. 102; CX 10.)

Dr. Hoenecke diagnosed the Claimant with right shoulder adhesive capsulitis and a possible small tear of the rotator cuff. (HT, p. 9.) Dr. Hoenecke then referred the Claimant to Dr. Franklin Kozin for a rheumatologic evaluation. (CX 9, pp. 93, 97.) Dr. Hoenecke certified the Claimant as totally disabled. (CX 9, pp. 95, 98.) Ultimately, Dr. Hoenecke determined that

the Claimant did not have a rotator cuff tear based on an arthogram he had ordered, but there was a partial tear on the underside of her rotator cuff. (CX 23, p. 379.) He also referred the Claimant to Dr. John S. Romine, a neurologist, for further evaluation. (HT, pp. 176-77.) Dr. Romine performed an MRI on the Claimant's brain and spine and determined that she did not suffer from any neurological problems. (HT, p. 177.) Dr. Hoenecke then referred her to see a neurosurgeon, Dr. Christopher Uchiyama. (HT, p. 177.)

Dr. Uchiyama diagnosed the Claimant with a central disc herniation of the degenerative type at C5-6, cervical radiculopathy and possible early cervical myelopathy. (HT, p. 177; CX 23, p. 377.) Dr. Uchiyama then referred the Claimant to another neurosurgeon for a second medical opinion.

The Claimant then saw Dr. Scott Carstens, a board-certified internist and rheumatologist, who diagnosed her with myofascial pain syndrome. (HT, p. 179.) Dr. Carstens referred her to Dr. Kozin, who diagnosed fibromyalgia and repetitive stress injury, in addition to myofascial pain syndrome. (HT, p. 182.)

The Claimant changed her primary care physician to Dr. Annamaria Calabro, who started treating her on October 4, 2004. (CX 8, p. 87.) Dr. Calabro analyzed the Claimant's records and recorded a long history regarding the Claimant's symptoms and her time in Iraq. (HT, pp. 186-87.) Dr. Calabro diagnosed her with post-traumatic stress disorder ("PTSD") and prescribed Lexipro for the Claimant. (HT, pp. 187-88.) Dr. Calabro opined that the Claimant had reached maximum medical improvement and should not return to any form of work. (CX 27, pp. 28-29.)

On January 31, 2005, the Claimant commenced psychiatric treatment with Dr. Eve Dreyfus, a board-certified adult and child psychiatrist. (HT, pp. 30, 34.) Dr. Dreyfus diagnosed the Claimant as suffering from PTSD and severe depression with panic attacks. At the time of trial, Dr. Dreyfus had seen the Claimant for 30 minutes every week for 43 weeks. (HT, p. 41.) Dr. Dreyfus concluded that the Claimant was totally disabled and could not resume any kind of work. (HT, pp. 43-44.)

Currently, the Claimant systematically re-experiences the traumatic events from her time in Iraq by continually recalling images, thoughts, and perceptions from the attack. (HT, p. 38.) She also has recurrent nightmares of the event, which hinder her ability to sleep. (HT, p. 38.) She acts and believes as though the traumatic events are recurring in her everyday life. (HT, p. 38.) The Claimant is unable to look at anything that remotely reminds her of war. (HT pp. 38-39.) Many visual and auditory stimuli arouse the events that she experienced and she makes concerted efforts to avoid them. (HT, p. 39.) The Claimant attempts to avoid thoughts, feelings, or conversations that she associates with the traumatic event by refraining from discussions with her friends, secluding herself in her home, and refusing to turn on the television or radio. (HT, p. 39.) Finally, the Claimant has difficulty recalling the traumatic event and has mentally blocked out portions of the event in her memory. (HT, p. 39.)

I observed the Claimant during her live testimony. When she was being examined about the attack on the Al-Rashid Hotel, I noticed that she would take a prolonged amount of time to respond. She would also become tearful and visibly upset. At one point, while the Claimant was

recounting the traumatic event of the rockets hitting the hotel, she began crying and covered her ears.

Applicable Law and Discussion

The Claimant alleges that she suffers from PTSD because of her experiences in Iraq. She has been diagnosed with PTSD and her treating psychiatrist, Dr. Dreyfus, attributed her illness to the traumatic events the Claimant experienced while in Iraq. Respondents, relying on the opinion of Dr. Mohan Nair, argue that the Claimant does not suffer from PTSD, but rather suffers from an undifferentiated somatoform disorder because she allegedly has physical pains that cannot be explained on medical grounds. I find Dr. Dreyfus' medical evaluation and opinion to be more persuasive.

A. The Claimant Suffers From PTSD

Dr. Nair testified that he did not believe the Claimant suffers from PTSD because she did not seek treatment for PTSD and was not diagnosed with the condition until almost a year after she returned from Baghdad. (HT, p. 550.) However, I find that Dr. Nair's reliance on the delay in the PTSD diagnosis in concluding that the Claimant does not suffer from PTSD to be erroneous.

PTSD is a difficult condition to diagnose promptly. Courts have recognized that psychological disorders such as PTSD may manifest themselves progressively, thus resulting in delayed diagnoses. *Blankenship v. Bowen*, 874 F.2d 1116, 1122 (6th Cir. 1989). The Sixth Circuit found that the date that psychological symptoms are initially recognized by a psychiatrist is not determinative of when an individual's impairment becomes disabling. *Id.* at 1124. The Court noted that mental disorders cannot be easily ascertained or verified by objective clinical testing as other physical ailments can. *Id*. at 1121. A plaintiff who is not diagnosed for a mental impairment until long after the symptoms first appear does not preclude the possibility that the plaintiff became disabled before he or she was ultimately diagnosed. *Id.* at 1122 Accordingly, the Sixth Circuit reasoned, "[I]t is a questionable practice to chastise one with a mental impairment for the exercise of poor judgment in seeking rehabilitation[.]" *Id.* at 1124.

In *Ott v. Chater*, 899 F.Supp. 550 (D. Kan. 1995), the plaintiff served in the U.S. Army from 1965 to 1969, completing two tours of duty in Vietnam. When he returned to the United States, he returned to work in various occupations, but was not diagnosed with PTSD until years later. *Id*. at 553. Relying on the Sixth Circuit's opinion in *Blankenship,* the District Court reasoned that "the date the PTSD symptoms initially appear is not determinative of when the individual's impairment becomes disabling." *Id.* at 554.

Here, before the Claimant went to Iraq to develop business for the Young Group of SAIC, she was a high functioning and capable individual who had no prior history of psychological problems. She traveled around the world to work on advanced tele-communications projects and maintained a healthy social life. (HT, pp. 39-40.) While in Iraq, the Claimant had a near death experience and witnessed gruesome and tragic events. (HT, pp. 162-63) Upon returning from Iraq, the Claimant experienced muscular ailments and depression accompanied by panic attacks and recurring nightmares that were so pronounced that she sought

medical attention. Her physicians initially focused on treating her muscular ailments and hearing loss. Similar to the facts in *Ott* and *Blankenship*, the Claimant was not diagnosed with PTSD immediately after experiencing the traumatic events of the bombing of the Al Rashid Hotel. However, Dr. Dreyfus, a physician who has experience treating PTSD at Veterans Administration Hospitals, opined that the Claimant's PTSD began in Iraq and worsened over a course of two years, rendering her disabled and nonfunctional. (HT, p. 34.)

Section 309.1 of the Fourth Edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM IV") by the American Psychiatric Association sets forth the criteria for determining whether an individual suffers from PTSD:

(1) A person has been exposed to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury; or witnessed an event that involves death or injury of another person, or learned about unexpected or violent death, serious harm or injury experienced by a family member or other close associate.

(2) The patient's response to the event must involve intense fear, helplessness, or horror.

(3) Persistent re-experiencing of the traumatic event, persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness and persistent symptoms of increased arousal,

(4) The patient's symptoms are present for more than one month and the disturbance must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

DSM IV § 309.1.

Here, in examining the first criterion of the four-criteria analysis, it is clear that the Claimant experienced a traumatic event that involved threatened death or serious injury. She was in the Al Rashid Hotel when it was under attack, saw people she lived in close quarters with brought out on stretchers, and learned of the actual death of someone she considered to be a friend. (HT, pp. 162-63.) Therefore, the Claimant's experience while a resident in the Al Rashid hotel satisfies the first criterion of the test for PTSD, because her direct and personal experience with the bombing and its aftermath was an extreme traumatic stressor and the bombing ultimately resulted in death, including that of her personal acquaintance and friend.

The second criterion required by the DSM IV, is that the patient's response to the event must involve intense fear, helplessness, or horror. (HT, p. 37.) The Claimant is currently unable to turn on the television or radio for fear of seeing a news program that will depict or mention war. (HT, p. 39.) When the Claimant is forced to recall the events of the attacks, she begins crying uncontrollably. (HT, p. 39.) Her distress when asked to describe her experience was very apparent at the hearing. Her testimony of the second attack had to be halted several times because she was too distraught to continue. Dr. Dreyfus testified that the Claimant has an ongoing sense of a foreboding future. (HT, p. 40.) The Claimant was unable to attend her two of the independent medical examinations scheduled by Respondents because they were

scheduled to take place in a hotel[3] and she mentally associates all hotels with the grisly attacks on the Al-Rashid Hotel. Accordingly, I find that the Claimant exhibits a sense of horror and helplessness because she is afraid to leave the house or watch television. These fears leave her helpless to perform essential daily activities. Therefore, the Claimant's behavior constitutes the "intense fear, helplessness, or horror" required by the second criterion of PTSD.

The third listed criterion in a diagnosis of PTSD requires that the Claimant persistently re-experience the traumatic event, persistently avoid stimuli associated with the trauma, and experience numbing of her general responsiveness and persistent symptoms of increased arousal. (HT, p. 38.) Both the testimony of Dr. Dreyfus and the Claimant establish that she frequently re-experiences the traumatic event. She has recurring nightmares which make sleeping difficult. During her live testimony, I observed the Claimant becoming visibly upset and non-responsive when being asked questions about the attacks on the Al Rashid Hotel. Furthermore, she persistently avoids any stimuli which she associates with the trauma by not turning on the radio or television, not talking to her friends, and avoiding hotels.

The last criterion set forth in the DSM IV, requires that the Claimant's symptoms be present for more than one month and the disturbance cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. (DSM IV, Fourth Edition, p. 463.) The Claimant's symptoms have been present for more than one month because they were present during her first consultation with Dr. Dreyfus on January 31, 2005, and during the trial on May 25, 2006. Additionally, Dr. Dreyfus testified that the Claimant's PTSD significantly impairs her social and occupational life. The Claimant is unable to leave her home, watch television, communicate with her friends, or otherwise accomplish normal daily activities.

Dr. Nair, the Respondent's expert witness, offered a number of explanations for his opinion that the Claimant does not suffer from PTSD. However, I find no merit to any of them. Dr. Nair opined that the Claimant does not suffer from PTSD because she did not seek treatment for it at an earlier date. (HT, p. 549.) As stated above, this is not a requirement for diagnosing PTSD. In fact, the DSM IV states that "PTSD can occur at any age, and that symptoms usually begin within the first three months after trauma, although there may be a delay of months, or even years, before symptoms appear." (DSM IV, p. 466) According to Dr. Dreyfus, the DSM IV, and the Sixth Circuit, there is no requirement that PTSD emerge directly after the traumatic event. In fact, the DSM IV does not specify a timeframe as to when the PTSD symptoms might emerge. I fully agree with the Sixth Circuit's statement that "[I]t is a questionable practice to chastise one with a mental impairment for the exercise of poor judgment in seeking rehabilitation." I find it troubling that Dr. Nair, who treats PTSD patients, was not aware that even the DSM IV recognizes that symptoms of PTSD may not appear immediately.

Dr. Nair also stated that he believed that the Claimant did not suffer from PTSD because she did not lose any weight, but instead gained three pounds. (HT, p. 551.) However, weight loss is not one of the listed criterion for PTSD. Dr. Nair's consideration of weight loss and his unfamiliarity with the fact that PTSD symptoms do not always appear right away undermine the credibility and reliability of his opinion.

[3] Exhibit 8 of Respondents' Motion to Compel Claimant to Attend Independent Medical Examination and Motion to Continue Trial filed May 10, 2006.

In further support of his conclusion that the Claimant does not suffer from PTSD, Dr. Nair pointed to the Claimant's deposition of March 1, 2006. (HT, p. 617.) Dr. Nair stated that the Claimant could not be suffering from PTSD because she was able to perform extremely well in a deposition that lasted over five hours without losing attention or concentration. (HT, p. 554-55.) However, Dr. Nair was not present during that deposition nor did he watch a videotape or listen to a recording of it. (HT, p. 617.) He only read a transcript of the Claimant's deposition. (HT, p. 617.) He was unable to observe her demeanor, whether she spoke quickly or slowly, how much time she took to answer questions, and whether her reactions were emotional or stoic.

It was not possible for Dr. Nair to judge the Claimant's performance at a deposition without any visual or audio observations. I note that when the Claimant testified at the hearing, her responses to questions often were very drawn out because she paused between words or spoke very slowly, apparently because of her emotional state. Her pauses and slow responses are not reflected in the hearing transcript. If I had merely read the transcript instead of observing the Claimant's live testimony, I would not have known that the Claimant's responses were very hesitant and drawn out. Again, it is disturbing that Dr. Nair does not seem to understand that you cannot judge a person's emotional state or verbal performance from reading a dry transcript. Dr. Dreyfus testified that the Claimant was so reluctant to talk about her experience in Baghdad that she was unable to give Dr. Dreyfus any details of her experience until her 22nd therapy session.

Dr. Nair also reasoned that the Claimant does not suffer from PTSD because the Claimant was able to participate and took notes during the hearing. Dr. Dreyfus explained that people who do not normally function at a very high level may display more difficulty in performing such tasks. However, the Claimant has a master's degree, held a very demanding job, had a healthy social life, and functioned at a very high level overall, prior to working in Iraq. Dr. Dreyfus explained that because the Claimant normally functions at an exceptionally high level, participating at the hearing, which would be a normal activity level for an average individual, does not meant that the Claimant's functioning level has not reduced. She noted that a person who an I.Q. of 150 who was exposed to a traumatic event and became traumatized might still have an ability to concentrate that is superior to most of the population. (HT, p. 689.) She further explained that while the Claimant was able to focus on this case, she did so with extreme difficulty and that she could wind up hospitalized after the hearing. (HT, pp 700-01.) Thus, the Claimant's ability to take notes at the hearing is not evidence that her ability to function has not been reduced.

Finally, Dr. Nair attempted to explain the Claimant's symptoms on alternative medical grounds. (HT, p. 545.) He diagnosed her with undifferentiated somatoform disorder based on physical complaints that he alleged were unsubstantiated by medical examinations and tests. (HT, p. 545.) However, the Claimant's complaints of physical pain were explained by numerous doctors based on medical testing and examinations. (HT, pp. 9, 177, 182, 628, 629, 631, 637; CX 9, pp. 90-91; CX 23, p. 379, CX 23, p. 377.) The Claimant was diagnosed with adhesive capsulitis and a partial tear on the underside of the rotator cuff by Dr. Heinz Hoenecke, Jr. (HT, p. 9, CX 9, pp. 90-91; CX 23, p. 379.) She was also diagnosed with a central disc herniation of the degenerative type at C5-6 and cervical radiculopathy by Dr. Christopher Uchiyama. (HT, p. 177; CX 23, p. 377.) Lastly, the Claimant was diagnosed with myofascial pain syndrome by Dr. Scott Carstens. (HT, p. 179.)

In conclusion, I find that given the numerous shortcomings of Dr. Nair's medical opinion, Dr. Dreyfus' medical conclusions are more persuasive. Because the Claimant has met the criterion for PTSD set forth in the DSM IV, I find that the Claimant indeed suffers from PTSD.

B. The Claimant's Injury Does Not Fall Within the DBA

While I find the Claimant suffers from PTSD as a result of her experience in Baghdad while working for the Employer, she must establish that she was covered by the DBA before she can recover benefits under the Longshore Act. The Claimant alleges she is covered under 42 U.S.C. § 1651(a)(4) because she worked under a Government contract. Contrarily, Respondents argue that the Claimant never worked under a Government contract, but rather was sent to Iraq for marketing purposes. Based on all the evidence, I agree with Respondents. Although the Claimant did not claim coverage under other sections of the DBA, I will discuss, *sua sponte*, those sections of the DBA that have been preemptively rebutted by Respondents in their final brief.

Section 1651 of the DBA, in relevant part, extends the provisions of the Longshore Act to employees who are injured or die while engaged in any employment in the following places of employment:

> (1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or
>
> (2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or
>
> (3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;
>
> (4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)–(3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such

> contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract[.] 42 U.S.C. § 1651.

1. The Claimant Did Not Work Under a Government Contract

To recover for work-related injuries under 42 U.S.C. § 1651(a)(4), an employee must sustain an injury within the course and scope of her employment, while working outside the continental United States under a contract or subcontract entered into by the employer with the U.S. Government, for public work purposes. *Schmidt v. Northrop Grumman Sys*., 2005 United States Dist. LEXIS 24688, *10 (D. Ga. 2005). Under the DBA, the "course of employment" standard has been expanded to the "zone of special danger" doctrine. *Kelly v. Washington Group International, Inc.*, 39 BRBS 104 (ALJ) (2005). Under the doctrine, a claimant meets the test for recovery if the obligations or conditions of her employment created a zone of special danger out of which the claimant's injury occurred. *O'Leary v. Brown-Pacific-Maxon,* 340 U.S. 504, 506-07 (1951). Thus, a claimant's injury arises out of her employment if it resulted from the risk incidental to the location where the employment required her to be. *Amalgamated Ass'n of Street, Electric Railway & M.C. Emp. of America v. Adler,* 340 F.2d 799 (D.C. Cir. 1964).

The Benefits Review Board ("BRB") has identified three alternative ways to define "working under a Government contract" under the DBA. First, an employee works under a Government contract for purposes of the DBA if the employee "acted in furtherance of a Government contract." *Airey v. Birdair, Div. of Bird and Sons*, 12 BRBS 405 (1980). Second, an employee is covered by the DBA if he was "involved in the performance of a Government contract." *Rosenthal v. Statistica*, 31 BRBS 215 (1998). Finally, an employee is covered by the DBA if the employee was doing work "which was related to the employer's contract with the United States." *Casey v. Chapman College-Pace Program*, 23 BRBS 7 (1989).

Here, the evidence establishes that the Claimant was in Iraq to develop business opportunities for SAIC's Young Group. (EX 9, p. 829; EX 27, p. 1560; EX 28, pp. 1695, 1707; EX 29, p. 1863; HT, pp. 143, 296-97, 302, 450, 458.) The Claimant's direct supervisor, Mr. Young, who authorized her trip to Iraq, testified that she was sent to Iraq exclusively to develop business for the Young Group and that she was not working under any contract. (EX 28, p. 1695.) Additionally, Mr. DeCort, the SAIC Program Manager who initially approached Mr. Young about possible business opportunities in Iraq, also testified that the Claimant was sent to Iraq to develop business. (HT, pp. 296-97.) Mr. Young and Mr. DeCort exchanged e-mail messages about the Claimant's trip to Iraq and discussed the need to put the total capabilities of telecom skills in front of their "potential clients." (EX 27, p. 1597.)

The Claimant contrarily alleges she worked on the DGS contract and Task Order 20, which was part of the DISA contract. (HT, p. 89.) However, Mr. Rodakowski, the supervisor of Task Order 20, testified that the Claimant did not work on Task Order 20 at any point and reiterated that she was in Iraq to develop business for the Young Group. (EX 29, p. 1863.)

The e-mail messages that the Claimant sent from Iraq to Mr. Young and other SAIC employees also establish that she was there to develop business. On August 28, 2003, she sent an e-mail message to Mr. Young, reporting that she had met with Jowan Masum, the adviser to the Iraq Telephone Post Company and had talked about SAIC's telecom capabilities. She also informed Mr. Young that she had asked Ms. Masum about delaying her departure from Baghdad so she could "do proper discovery of the current capabilities to be able to propose an architecture solution." (EX 27, p. 1630.) In this same e-mail message, she reported meeting with Dan Sudnick and the fact that she suggested that the Young Group work with Mr. Sudnick "as a trusted agent to do the telecom strategy development for the Telecom reconstruction." (EX 27, p. 1630.) She informed Mr. Young that she was going to get approval to extend her stay so she could explore these business opportunities. The Claimant also sent e-mails to Mr. Young about the possibility of obtaining contracts directly from the Iraqi Ministries. (EX 27, pp. 1613-18, 1622-26.) She also documented her discussions with Mr. Rodakowski about the possibility of the Young Group doing work for the Dube Group. (EX 27, p. 1620.) She sent Mr. Young numerous other e-mail messages from Baghdad that referred to possible business opportunities. (EX 27, pp. 1561-62, 1586, 1592.)

There are also other contemporaneous e-mail messages exchanged by other SAIC employees referring to the Claimant's goal of business development. Mr. Nightingale sent an e-mail message to a number of individuals, including Mr. Young, about extending Mr. DeCort's and the Claimant's stay in Baghdad, stating that they were doing great work and finding a lot of leads, noting that their presence had been extremely helpful in developing awareness and that Mr. DeCort and the Claimant understood that their "mission" was to "bring home contracts." (EX 27, p. 1585.) John Hartman sent an e-mail message to Mr. Rodakowski on September 8, 2003, asking who the Claimant was, questioning her role with DISA or Mr. Hartman, stating that he [Mr. Hartman] did not see any need to add anymore SAIC participants to Task Order 20. Mr. Rodakowski responded that the Claimant was in Iraq for business development purposes and had "literally been wandering the Palace trying to gather information and drum up business." In his response to Mr. Hartman, Mr. Rodakowski also stated that he told her that his plans and team were set for the present but that the Claimant "missed the point" on much that he told her. (EX 27, pp. 1588-89.)

As mentioned earlier, only those individuals who were working under a government contract were allowed to access, enter, and stay in the Green Zone. The Claimant's ID badge identified her as working under the IMN contract and she was housed with the IMN workers in the Palace so that she would have access to the Green Zone. However, she was not working under the IMN contract and had no interaction with the SAIC employees working under the IMN contract, except to answer their phones if no one else was there. (HT, p. 124.) Finally, on November 6, 2003, Keith Nightingale sent an e-mail message to Mr. Young and a number of other individuals stating that the Claimant had to leave the IMN space in the Green Zone or they would get in trouble. Mr. Nightingale asked that arrangements be made for the Claimant to have her own office space or to send her home. Mr. Young responded that he understood but that the Claimant was the "most driven person [he] had ever worked with and always wants to get that last proposal in." Mr. Nightingale responded that she could not stay or work in the IMN space. (EX 27, pp. 1611-12.)

There is no evidence, aside from the Claimant's own testimony, to substantiate her claim that she worked on a Government contract while in Iraq. In fact, her testimony is refuted by the her own e-mail message. During a dispute over her travel expenses with SAIC for her time in Iraq, the Claimant, herself, composed an e-mail to Joe Secker, the Business Manager for the Young Group, in which she admitted that she was not working under a contract while in Iraq. (EX 9, p. 829.) In the e-mail she wrote, "I was not on a contract while in Iraq. I went per your authorization to do business development. The per diem is a mechanism to pay expenses for that. We had no contract with any contractor for the work I performed. I believe you know that." (EX 9, p. 829.)

Also, the Claimant originally testified in her deposition that the purpose of her trip to Iraq was to develop new business for the Young Group. (EX 21, pp. 75-76.) Later, the Claimant issued an errata sheet to revoke that particular testimony. The stated reason for the deletion on the errata sheet was that the Claimant did not know the intentions of the Employer and that she only knew she was going to Iraq to give a seminar to the CPA. (EX 21, Errata Sheet p. 2.)

It is improbable that the Claimant, who was originally hesitant to make the trip, would travel all the way to Iraq without knowing the purpose of her trip and what her work was to consist of. Moreover, if I am to believe that the Claimant did not know her Employer's intentions in sending her to Iraq, it would follow that the Claimant was similarly uninformed of whether she was working on a contract with the U.S. Government while in Iraq. Lastly, the Claimant alleges she worked on the DISA contract. However, she stated in her deposition that DISA, which is a part of the DGS contract, was one of the contracts she was trying to win. (EX 19, p. 265.)

The Claimant's original deposition testimony is consistent with the Mr. Rodakowski's testimony that the Claimant attempted to win a subcontract under the DGS contract, but never actually worked under the DGS contract. The Claimant's original responses in her deposition contradict her subsequent responses during her live testimony, leading me to conclude that she is either confused or not credible. Either way, the Claimant's allegation that she worked on a Government contract is not substantiated by any other objective evidence in the record or any testimony besides her own.

There is also no objective evidence in the record that the Claimant satisfied any of the BRB's three definitions for working under a government contract. First, she was not involved in the performance of any contract. Her recruitment of Bob Enger does not constitute "performance of a contract" because she was not hired as a subcontractor by the Dube Group, the Group that had a contract with the United States Government, to recruit him. Second, the Claimant was not acting "in furtherance of" a Government contract because she was not authorized to do so. She never acquired a contract for the Young Group, and she was never hired by any other Group who had a U.S. Government contract. Lastly, the Claimant did not perform work which was related to the Employer's contract with the United States. Although the Claimant worked for SAIC, she exclusively worked for the Young Group of SAIC. Because of the unique structure of SAIC and the competitive climate between the various Groups, the Claimant could have only been employed by one of the Group managers. The Claimant was paid exclusively by the Young Group and SAIC Corporate, and she was never paid by the Dube Group. Her employer was not the Dube Group. Thus, she was not acting in furtherance of her

employer's contract, because her specific employer, the Young Group, did not have a Government contract in Iraq.

In *Rosenthal v. Statistica Inc.,* 31 BRBS 215 (1998), the BRB focused on the claimant's time sheets to determine whether he was working under a contract with the United States. The BRB upheld the decision that the claimant was not covered by the DBA because the time sheets proved that the claimant had been engaged in marketing efforts for his employer. *Id.* Because the claimant in *Rosenthal* was doing marketing and was not working on a contract with the U.S. Government, he was not covered by the DBA. *Id.*

Rosenthal is precisely on point. The claimant in *Rosenthal* was engaged in marketing efforts, just as the Claimant was. Robert Young, the Claimant's supervisor, testified that the Claimant was sent to Iraq for business development purposes, and was not working on an existing contract that SAIC had with the U.S. Government. Mr. DeCort, the SAIC employee who contacted the Claimant about going to Iraq, also testified that she was sent to Iraq to pursue business opportunities and that she was not sent there to work on any existing contracts. Here, similar to *Rosenthal*, there is also evidence of timesheets demonstrating that the Claimant was not being paid by the U.S. Government, but was paid out of SAIC's marketing overhead. The Claimant's time in Iraq was charged as overhead and split between the Young Group and the SAIC Corporate accounts. If this had been done in error and her time should have been billed to a government contract, then her time cards would have been corrected. Such a correction would have been recorded in the system. However, the record currently reflects that no such change was made and that the Claimant's work was paid for by SAIC, and not the U.S. Government. Furthermore, the charge codes the Claimant used were labeled as marketing charge codes and did not mention a specific contract.

If the Claimant worked under a U.S. Government contract, her SAIC timesheets would indicate this. The Claimant testified that she did not directly bill any of her time in Iraq under a contract number. However, she believed that she was ultimately paid under a Government contract. There is no evidence in the record to confirm that belief. First, Mr. Young testified that allowing the Claimant's accounts to first go through the two dummy charge codes and then onto a contract would be prohibited accounting and against company policy. (EX 28, p. 1709.) It would not be against company policy, however, to make corrections and apply retroactive changes to certain timecards and billing, had an error been made concerning whom to bill the work to. (HT, p. 476.) If an adjustment were ultimately made by any SAIC employee to another SAIC employee's timesheet and billing information, an adjusted timecard would appear in the online time recording system. (HT, pp. 474-75.) Ms. Melody Mack-Aycock, the SAIC employee in the accounting department responsible for billing the Claimant's work to the two separate overhead accounts, always charged the Claimant's time to the two overhead accounts. (HT, pp. 473-74.) Furthermore, Ms. Mack-Aycock never saw any reclassifications or recharges to a Government contract made on behalf of the Claimant's timecard. (HT, p. 474.)

Mr. Rodakowski and Mr. Young's contentions that the Claimant did not work for the DGS or DISA contracts are also substantiated by other evidence in the record. Mr. Rodakowski testified that all SAIC employees working under the DGS contract had to obtain a security clearance and a contract code from the accounting department. Here, as in *Airey*, the Claimant did not receive either. In *Airey v. Birdair*, 12 BRBS 405 (1980), the BRB held that the employee

was not working under a U.S. Government contract because he lacked the appropriate security clearance needed for employees working under contracts with the U.S. Government. *Id*.

The Claimant was the only witness who testified that she was working under a Government contract while in Iraq. The Claimant testified that Mr. Seitz, an employee of the DOD who was in Iraq working on the DGS contract, asked the Claimant and Mr. Rodakowski to work together on the DISA contract. (HT, p. 116.) However, both Mr. Rodakowski and Mr. Young testified that the Claimant did not support the DISA contract in any way. (EX 28, p. 1710; EX 29, pp. 1818, 1821.) Furthermore, the Claimant, herself, at two different points--once during her sworn deposition--admitted she was not working under a Government contract. Lastly, the objective evidence of the timesheets and her lack of security clearance further serve to undermine her claim that she worked under a Government contract. In conclusion, I find that based on the evidence admitted into the record and presented at the hearing, the Claimant was not working under a Government contract while in Iraq. Thus, she is not covered by 42 U.S.C. § 1651(a)(4).

2. The Green Zone Is Not a Military Base

Section 1651(a)(1) of the DBA states that any employee who is injured while engaged in any employment at a military, air or naval base acquired after January 1, 1940, by the United States from any foreign Government is covered under the DBA. *Id*. Thus, the questions here are whether the Green Zone constitutes a military, air or navel base for purposes of the statute, and, if so, whether the United States has "acquired" it must be addressed.

In *Republic Aviation Corporation v. Lowe*, 164 F.2d 18 (2d Cir. 1947), the Second Circuit examined the question of whether an island, which was a Japanese possession and which had been captured by force by American Armed Forces, had been "acquired" by the United States under Section 1651(a)(1). *Id*. at 19-21. The claimant, a pilot, was killed just after he took off from the air base on the island of Ia Shima. *Id*. at 19. The Second Circuit held that the U.S. Armed Forces had possession and control of the base pursuant to the conquest of Ia Shima; they were using the base in conducting the war against Japan; and it was thus a base acquired by the U.S. Government. *Id.* at 20-21.

Unlike the air base at Ia Shima, the Green Zone was not an air base or military base before the war began. There is no evidence that the Green Zone had a naval or air base like the island of Ia Shima prior to the war. After the war, the Green Zone was an area designed to be a safe haven for contractors, media crew, military personnel, and other civilians. (HT, pp. 334-35.) Additionally, many indigenous Iraqis lived in the Green Zone and set up shops and markets there. (HT, p. 336.)

The Green Zone was partly protected by the military but it was not controlled or owned by the military. (EX 29, p. 1839.) Rather the CPA owned and controlled the Green Zone. (EX 29, pp. 1839, 1840.) The CPA maintained order within the Green Zone and issued entrance badges. (HT, p. 140; EX 29, p. 1865.) Furthermore, the people within the Green Zone did not have to follow U.S. military rules or standards of procedure as one would normally have to on a military base,. (EX 29, pp. 1840, 1841.) Lastly, the CPA will ultimately hand the Green Zone back over to the Iraqi people in the future. (EX 29, p. 1845.)

Although there is evidence that lends itself to the plausibility that the United States used the Green Zone for military purposes, there is no definitive evidence of official military status. Furthermore, there is no evidence that the United States acquired the Green Zone for purposes of the statute. In conclusion, I find that based on the evidence provided, the Green Zone is not a military base. Thus, the Claimant is not covered under 42 U.S.C. § 1651(a) (1).

3. The Green Zone Is Not a Territory or Possession

Section 1651(a)(2) states that any employee who is injured while engaged in any employment on any lands occupied or used by the United States for military or naval purposes in any territory or possession outside of the continental United States is covered by the DBA. *Id*.

In *Davila-Perez v. Lockheed Martin Corp.*, 202 F.3d 464 (1st Cir. 2000), the First Circuit considered whether a military installation in Puerto Rico was in a territory or possession on land outside the continental United States. *Id*. The First Circuit held that Puerto Rico was considered a territory or possession for purposes of the DBA because Puerto Rico is still subject to the plenary powers of Congress under the territorial clause. *Id*. at 464.

Similarly, a District Court in the District of Columbia held that Guantanamo Bay was a territory because the United States exercises plenary and exclusive jurisdiction over it. *Rasul v. Rumsfeld*, 433 F.Supp.2d 58 (D.C. 2006). The court noted that although Cuba had ultimate sovereignty, Guantanamo Bay still constituted a United States territory. *Id*. The United States held a lease, which specifically authorized the United States to exercise "complete jurisdiction and control" over the Guantanamo Bay Naval Base and "may continue to exercise such control permanently if it so chooses." *Id*.

Here, there is no evidence that the people who resided, worked and passed through the Green Zone on a daily basis were subject to the plenary powers of Congress. The indigenous Iraqis set up markets and shops in accordance with their own customs and regulations. (HT, p. 336.) Also, from the testimony of Mr. Rodakowski who worked and lived in the Green Zone, it appears that the CPA controlled the Green Zone. (EX 29, pp. 1839, 1840.) Because a provisional authority was already established to rule the area while reconstruction of Iraq was underway, this rules out the possibility that the United States was the authority in the Green Zone. Additionally, it is well established that Puerto Rico, the location of the military installation in *Davila-Perez*, is an official Territory of the United States, and therefore it fits within the plain meaning of the statute. (Exhibit B of Respondents' Post Trial Brief.) Iraq on the other hand, had not been added to any list of Territories currently held by the United States as of September 15, 2006. (Exhibit B of Respondents' Post Trial Brief.) Finally, there is no evidence, as there was in *Rasul*, that the United States had a lease agreement with Iraq to occupy the Green Zone.

In conclusion, because neither the Green Zone nor Iraq can be considered a territory or possession for purposes of the statute, the Claimant is not covered under 42 U.S.C. § 1651(a) (2).

CONCLUSION

In light of the evidence and law above, I find that while the Claimant does suffer from Post Traumatic Stress Disorder as a result of her employment with SAIC, the Claimant is not an employee covered by the DBA.

ORDER

The Claimant's claim under the DBA is hereby DENIED.

A

JENNIFER GEE
Administrative Law Judge